S.B. Civil Writ Petition NO.1408/2005

Ratanlal

vs

The Addl.District & Sessions Judge (FT) NO.3, Bikaner & Ors.

DATE OF ORDER : - 12.5.2005.

HON'BLE MR. PRAKASH TATIA,J.

Mr.MS Purohit, for the petitioner.
Mr.Mridul Jain, for the respondent

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Heard learned counsel for the parties.

The petitioner is aggrieved against the order dated 25th April, 2005 by which the trial court allowed the application of the plaintiff submitted on 17th Dec., 2004 and held that the written statement filed by the defendant on 17th Dec., 2004 itself since has been filed after much delay from the last date for filing the written statement, i.e., beyond even 90 days, therefore, the written statement cannot be taken on record.

According to learned counsel for the non-petitioner, the petitioner-defendant did not disclose sufficient reason for not filing the written statement in time and, therefore,the trial court has not

committed any illegality in putting the written statement out of the record. It is also submitted that the trial court considered the judgment of this Court also and, thereafter, passed the impugned order.

It appears from the documents placed on record that the plaintiff submitted an application on 17th Dec., 2004 stating therein that summons were served upon the defendant no.1 on 8th Sept., 2004. However, according to learned counsel for the non-petitioner in fact, summon was served upon the defendant no.1 on 9th August, 2004. In the application it is stated that defendant no.1 has not filed written statement today also and, therefore, the petitioner's right to file written statement may be closed. It appears from the facts that defendant before or after plaintiff's above application submitted written statement on the same day, i.e., on 17th Dec., 2004 itself. The trial court vide order dated 25.2.2005 allowed the plaintiff's application as mentioned above. Hence, this writ petition.

In view of the facts mentioned above it is clear that the case was fixed for filing the written statement by the trial court on 17th Dec., 2004 and plaintiff himself raised objection on 17th Dec., 2004 itself only and on that day, the defendant submitted the written statement. By that time, the time for filing the written statement expired, but since the written statement has already been filed before passing the order of

the trial court for closure of the right to file the written statement, therefore, the trial court should have allowed the written statement of the defendant to be on record particularly, in view of the fact of the case, which reveals that in absence of written statement of the defendant, the serious consequences likely to be followed.

In view of the above, the writ petition of the petitioner is allowed The order dated 25.2.2005 is set aside. The written statement already filed be treated to be on record. The trial court may now proceed. The stay petition has become infructuous and the same is hereby dismissed.

(Prakash Tatia), J.

c.p.goyal/-